

From Mr. Greene

CHARGE,

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DELIVERED TO THE

GRAND JURY,

OF THE

CITY & COUNTY of NORWICH,

ON

FRIDAY, ~~Aug.~~ 18, 1793,

BY

CHARLES HARVEY, Esq. Steward.

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CHARGE, &c.

GENTLEMEN,

IT is always with peculiar pleasure that I embrace any opportunity of addressing you in the character and office in which you are this day assembled, namely, as a Grand Jury, to enquire ~~of~~ the body of this city and county.—Those who reflect on the many and important benefits which the community derive from the services resulting from the impartial and diligent execution of the trust reposed in you, cannot but contemplate with satisfaction so wise and excellent an institution, and cannot but feel happy in enumerating and particularising the various duties which, by that institution, are confided to you—Your oath, which is so properly adapted equally to convey instruction in your duty, as to enforce the obligation to the performance of it, renders it unnecessary for me to enlarge on the general outline of the great trust, which you are this day called on to discharge; I shall only say that it consists in making diligent enquiry into whatever offen-

ces may exist, and to present the offenders to the Court, unawed by fear, unbiased by prejudice, uninfluenced by reward.

As under every form of Government there must be some laws by which the peace of society is preserved, its rights and liberties ascertained and defended, and persons and property protected, it is equally necessary that there should be some tribunal to take cognizance and to punish a breach of those laws, to which an appeal may at all times be made, and to which every man and every subject of the realm indiscriminately may resort for redress of wrongs and for distribution of justice.—The process by which all offences in this country are tried, is too well known to need any description here; the beginning of it however in all cases, (except in very few instances indeed) is by a presentment or indictment found by a Grand Jury, twelve of whom at least must concur in the finding, before any subsequent criminal proceeding can take place; and surely, Gentlemen, whilst such an institution as this exists in this country, there will exist at the same time a barrier equally efficacious in resisting, in suppressing, in punishing the guilty, as in affording protection and encouragement to the innocent, the virtuous and the deserving.

It will be unnecessary for me to enumerate the various matters which may this day become the subject of your enquiry, acquainted as you all must be with the nature of the crimes which at our Sessions are usually the objects of it, and having, I am confident, all of you, both from

your

your judgment and repeated experience, a clear and accurate knowledge of your duty.

Indeed, Gentlemen, I should at any other time have thought it needless to have entered into any discussion of any single branch of that duty, but at the present juncture, I deem myself called on by the commands of my Sovereign, which have been signified to every Magistrate who officiates in a similar situation to that which I have long had the honour to hold in this City.—Those commands it is my duty to obey, and I feel a sensible pleasure arising from that obedience, as the purport of them is congenial with the sentiments and inclinations in which I was early educated and instructed, which I have long cherished and maintained, and in which I trust I shall constantly persevere, from a confirmed conviction that they are founded on the most loyal and honourable principles, and on the soundest policy and wisdom.

The Magistrate to whose province it is assigned to deliver a Charge to the Grand Jury, has been enjoined to call their attention to some offences, which have lately become so prevalent and alarming, and have threatened so much danger to the general interests of the state, as to demand the interposition of the Executive Government to check, to controul, and if possible to suppress them. These offences are the publishing and circulating seditious and inflammatory libels, with a view to overturn and destroy our present excellent Constitution, and the holding seditious Meetings with the avowed purpose of effecting a similar object. And here, Gentlemen, it will
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be proper to observe to you what our law defines to be a Libel and punishable as such.—A Libel then, in a strict sense, is “the malicious aspersion of any one, expressed either by printing or writing, tending to blacken the memory of one who is dead, or the reputation of one living, and personally to expose him to hatred, ridicule and contempt; in a larger signification it may be extended to any defamation whatever: these Libels are against private men, or Magistrates and public persons; those against Magistrates deserve the greatest punishment; a libel against a private man may excite the person libelled, or his friends, to revenge and to a breach of the peace; a libel against a Magistrate is not only a breach of the peace, but a scandal to Government and stirs up sedition.”—This, Gentlemen, is the definition of a libel as laid down by that great authority my Lord Coke, and has been so constantly adhered to as an invariable rule, and confitined by so many determinations in the Courts of Justice, as to constitute it now the law of the land—it is that law which we are bound to administer; for we are not assembled to make laws or even to judge of their propriety, but to be governed and regulated in our conduct by those which are made; you, the Grand Jury, bound on your oaths to inquire whether this law has been violated, we as Magistrates to try by the verdict of another Jury, whether the person presented is guilty of the offence charged on him.

Having thus stated the law and our mutual obligations in consequence of that law, the next subject of enquiry will

will be, whether, any offence of this description has been committed within that jurisdiction, in which we have cognizance—and, Gentlemen, I am afraid that that fact is but too notorious; that writings and libels of the most seditious and inflammatory tendency have been industriously circulated, not only over this city, but over every part of the kingdom, that societies have been formed and subscriptions raised to encourage the authors, to recommend their publications, to print such cheap editions of their works as to cause them to be universally read, to distribute them gratuitously amongst those whose circumstances would not afford the purchase, and in short all means employed, which art or ingenuity could devise, to insure them a general ~~success~~ ^{perusal} amongst the lower classes of the community, are facts of such notoriety, and must have fallen so immediately within the sphere of your observation, as to require no additional evidence from the Bench to authenticate—the purport and tendency of these libels is to make men dissatisfied with the present Constitution, to arraign it *in toto*, to persuade the common people that it is defective in every part of it, that our limited Monarchy ought to be abolished, that the Aristocratic Branch of our Government, the House of Peers, is insufferable, that all gradations of rank and title are absurd distinctions, that the Three Estates by which we are at present governed is a ridiculous farce and not a Constitution; to this are subjoined other schemes and forms of Government, in which a visionary and impracticable Equality, founded on some pretended rights, is speciously introduced, and recommended to us

us as models of perfection, and patterns for our imitation —God forbid, Gentlemen, that any such recommendatory precepts should be listened to by any man who has the welfare of his country at heart; God forbid, that such doctrines should be for one moment inculcated with impunity in this land of freedom; already indeed has the almost general voice of this nation exclaimed against such pernicious, such fatal tenets; already has it condemned to public execration those insidious wretches, who, under the pretence of bringing peace and blessings to this isle, have really been endeavouring to sow in it the seeds of discord, sedition and dissention; already has the most unexampled union of formerly-contending party, now concurring in opinion, demonstrated to our public as well as private enemies, that this country is not to be duped by their cunning, is not to be misled by their faction, no more than it is to be intimidated by their menace, or overawed by their power; already has that same union, in declaring its veneration for their ancient constitution, firmly resolved to maintain and defend it at the hazard of their lives and fortunes; already like their ancestors, who, on an occasion not much dissimilar to the present, proudly said, “*Nolumus Leges Angliae mutare,*” have they, animated with the same patriotic spirit, expressed their marked disapprobation at having this glorious fabric touched or impaired, by men who are as ignorant perhaps or wilfully blind to its blessings, as they are strangers to its principles.—But should any man wish to substitute any other form of Government instead of that which we now possess, and under

der which, in spite of the powers of Europe, but a few years since, hostilely leagued and combined against us, and notwithstanding the great pecuniary difficulties in which that formidable combination involved us, we have arrived to the most envied superiority ; our agriculture, our commerce, and the arts flourishing beyond any former period, our population increased, the ingenuity, skill, and invention of our artificers and manufacturers carried to the most unrivalled excellence, to what other system are we to resort to insure a greater portion of national happiness and prosperity ? Is there in the whole world a Constitution where the rights of the people are so well understood, and so effectually secured ? Is there any other where the liberty and property of the meanest individual is so peculiarly ascertained and so securely guarded ? Examine Magna Charta, examine the Bill of Rights as framed and passed at the Revolution, in which the inalienable Rights of Englishmen are declared and solemnly recognised as their Birthright and Inheritance, and ask whether these glorious monuments of our ancestors patriotism and virtue, are not more solid foundations for our freedom, are not more substantial securities for our liberty, than the novel and chimerical doctrines of self-created politicians, or the mere dicta of speculative Philosophers ? Such an examination must convince the most incredulous, when he sees these valuable privileges incorporated into the body of our laws and statutes, that we are and I trust shall continue a free and prosperous country.

Let us now see, Gentlemen, what a neighbouring kingdom has acquired, after effecting a revolution, at the commencement of which every Englishman and every friend to freedom rejoiced, as it overturned the ancient despotism under which that country had long groaned, and afforded a rational expectation of its enjoying a well settled liberty—when that revolution was accomplished, a mild, benevolent, but also unfortunate Sovereign, wished his subjects to adopt a constitution on a plan somewhat similar to our own; elevated and blinded by their newly acquired power, they rejected his offer, and in its room have substituted a tyranny far more dreadful and alarming than their former despotic Monarchy; a Government without law, where every species of violence, rapine, plunder, barbarity and murder, is practised without controul, and with impunity, with no fixed law as a standard and rule for mens actions; the Council, the supreme Council of the nation, awed and directed in its proceedings by mobs, and clubs, and societies, composed of the vilest refuse of the most licentious metropolis, their decrees sanctioned and revoked as the Assembly is influenced by the clamours of this lawless banditti, or intimidated by the pikes and daggers of assassins! Is this liberty, is this government, is this a constitution? Yet it is such a system of anarchy and confusion that has found in this country its votaries and partizans, and these men who have reduced a populous and comparatively once happy country, to a slavery far more oppressive than the most arbitrary tyrant could have devised, and to a state of civilization not to be envied

vied even by savages, have been extolled as patriots and legislators; wretches, who having discarded and disclaimed all the ties of moral obligations and religious duty, have yet arrogated to themselves the title of Philanthropists; the impious ruffians who have banished all religion from the land, who have defiled and plundered its holy altars, who have exiled and massacred its venerable priests, because they could not conscientiously submit to the impositions of Atheists, have been applauded as the promoters of peace and the patrons of humanity—Yes, Gentlemen, in this country (sorry am I to observe it) a Society has been formed, hardy and wicked enough to recommend to public perusal the works of an Author, *inculcating those very principles which have been the immediate cause of all this devastation and bloodshed*; and this Society has had the unblushing audacity to usher this production into the world, under the pretence of more extensively circulating useful constitutional information—Good God, Gentlemen, when acts, from which all mankind shrink with horror, are not only palliated and excused, but when the perpetrators of them are openly espoused and countenanced, it is natural for men to inquire into the views and motives of their advocates; it becomes every man who has any stake in the present happiness and prosperity of his country, seriously to ask himself, for what prospect of greater advantage either to his personal interest, or to the public benefit, he is desired to hazard this rash experiment of change, reform, and innovation: it ought not to be a slight proof of a meliorated condition in our laws, our man-

ners, or our customs, which we should require in such a case; we should have actual demonstration before we consent to barter and exchange our present real and certain enjoyments, for ideal, remote, and therefore uncertain advantages.—I would not, Gentlemen, have made this digression, had I not, in some measure, been compelled to it by those reflections which naturally suggest themselves to any one, who attentively considers the great mischief and confusion which a sudden deviation from ancient and fixed establishments unavoidably produces; it serves, likewise, to explain the grounds and reasons, as well as the propriety of enforcing those laws to which I formerly adverted. For if such mischief is produced, (and that it is, we have but too shocking and melancholy an example), it is wise in Government early to enforce those wholesome and salutary laws calculated to prevent it; it is for the benefit of the community, for whom that Government acts, to apply, as early as possible, a remedy to evils, which, without such an interpolation, might become too formidable to be checked by its authority. Yet, in this instance, and at a crisis so alarming, our Government has not acted in any manner but that which is constitutionally directed; it demands no blind subversion to its will, no inconsiderate obedience to its wishes, but it relies solely on the discretion and intervention of a Grand Jury to assist its endeavours for the preservation of internal peace and quiet; it calls on that Grand Jury to make diligent enquiry into these offences which threaten so much calamity to the state, and to present the offenders to the Court,
that

that they may be amenable to the violated laws of their country.—In this procedure no tyrannical power is employed, no overbearing influence is made use of to compel your judgment, but every man is left to perform his duty, as his conscience, bound by the solemn oath he has taken, shall prompt and direct him.

But it may be asked, and indeed (whether from any design of throwing impediments in the way of justice, or from what other motive I cannot possibly determine) it has been observed; what ! may we not deliver and publish our opinions upon men and measures, upon modes of Government, and reason upon their respective excellence and merits, without incurring the penalties of the law, and risking the disgrace of punishment? Would not the liberty of the press (which we have been taught to consider as sacred) be violated by restraining the free circulation of mens thoughts on matters of public concern, in which every body are interested, and in which they have a right to be instructed? The answer to such arguments is as easy as putting the question which requires it—Yes ; any man may write his thoughts, any man may publish his opinions on Government, on the excellence of various forms of it, he may compare, and decide on their different merits, and give the preference to that which he thinks best adapted to promote the interest of those for whom it is framed; he may do this without fear, or without censure; these are mere speculative opinions, which every Author, who has leisure and talents for such investigations, has an undoubted right to discuss, and to support with such arguments as his ability

ability and ingenuity can furnish; but he shall not, under pretence of doing this, abuse and slander the existing Government of this country, or the characters of those who form its constituted authority; under pretence of reasoning on the advantages or disadvantages of Monarchy, he shall not vilify and reproach the present reigning Sovereign, and personally expose him to hatred, contempt, or ridicule; nor in treating of that high office, limited and restricted as it is by law in this kingdom, shall he declare such a regal Government to be tyrannical and oppressive; he shall not assert that the illustrious House of Hanover is unfit to sway the sceptre of this nation, and thus slander the august family, in whom rests the hereditary succession of our future Monarchs; in examining into the propriety of admitting any aristocratic interference in our legislature, he shall not assert that the House of Lords have not their views directed, or that they are inimical to the good of their country, and thus calumniate that hereditary legislative body; in treating of our national representation, and explaining its meaning, under colour of promoting a Reform, he shall not declare, that that which now exists has not the power of making laws, and that those statutes which it has had its share in framing and enacting, are nugatory, and that they require therefore no obedience from the people; neither shall he, in speaking of the nature and policy of these two estates considered as a Parliament, assert, and cause it to be believed, that it is an unnecessary, wicked and corrupt establishment; this he shall not do; Why? Because the permitting such invectives

tives to be thrown out against an existing Government, would at once break asunder all the bonds by which society is united ; it would tend not only to excite universal dissatisfaction, but would cause the people to rise and rebel against those, in whose hands the Constitution has placed the Government of the country ; because this ceases to be discussion ; it is no longer reasoning on a fair and well-founded hypothesis in order to draw certain conclusions, but it is asserting and assuming facts for the purpose of lessening the authority of the laws, and thereby depriving us of that necessary restraint and controul, by which the passions of mankind are kept under due and proper subjection, and by which national tranquility and prosperity is preserved, instead of being a prey to all the horrors of ungovernable and licentious violence. Observe too, for one moment, the consequence of these libels, which invite men not to argue but to act ; what would be the effect ; after our Constitution was annihilated, and when our lives, our liberty and our property, were deprived of that known safeguard which has hitherto legally protected them, what hopes, what prospect should we have of being much longer secured against that ruin and destruction, the certain attendants on civil commotions and discord ?—If this, therefore, was tolerated, no Government could exist, for men would always be found who would endeavour to destroy that system with which they were made discontented.—Even the French Legislators have had the policy to provide against this evil ; but they have adopted measures for its prevention which could not be endured

in any country, where the least semblance of liberty was preserved ; they have by a sanguinary decree, which none but tyrants could have framed, and which none but slaves could have sanctioned, pronounced the sentence of death on any one who shall venture to publish an opinion that Monarchy ought to form any part of their Government.—Nor is it any answer to contend that these Authors, if evidently wrong in their principles, may be retuted, and therefore that their writings cannot produce mischief ; this is false argument, for if such productions are disseminated among the lower classes of the community, whose education cannot so readily supply the means of answer and refutation, if they are distributed among men of that rank of life who are likely enough to be captivated by the first impressions, which such flattering doctrines as ~~are~~ establishing Equality will probably create ; who are but too prone to listen to those, who speak to them about the deprivation of rights, and who are willing enough to believe any one who boldly assures them that they have the power, and ought therefore to assert them ; I say, if such illusions are thrown out, it is sometime before the arts and falsity of the deceiver can be exposed, and such favourite themes extirpated from their ideas. The poison may take too deep root before its antidote can be procured, and the same effect might be produced in the political as in the animal body, the Constitution would be destroyed before those medicines could be applied which were to avert the fatal consequences of the venom's deleterious quality.—I would not, Gentlemen, have trespassed so long

long on your time with these observations on this peculiar offence, had not the enormity of it been of late so glaring, as to require all the aid of Magistracy, and the active exertion of the well-meaning citizen to check and suppress it.

Having stated to you the nature and effect of these libels, it will be proper to observe who the law considers as amenable for the publication of them.—On this head I shall be as concise as the subject will admit, by stating very briefly how the law is applicable to it. In the first place, the Author of the Libel, if by any act of his own he consents to, or countenances the printing and dispersing it; but if he merely writes it and keeps it to himself, this is no offence, as it can produce no mischief—but if, after a Libel is written by one man, another take it either with ~~it~~ without the consent of the Author, and cause it to be published, the person so taking it puts himself in the place of the Author, and shall be amenable for the consequences—so too shall any one who sells and distributes it, whether principal or agent, for it is the duty of each to know that the works which they circulate are free from libellous matter—nor is ignorance of the contents of such books a sufficient excuse for those who sell and distribute them; such a defence, if proved, might, after conviction, mitigate the punishment, in some cases perhaps it might induce a Jury to acquit, but this being mere matter of defence, and therefore a fact into which a Petty Jury only can inquire, would be no bar to a presentment—and the reason for this distinction is obvious, for was ignorance alone allowed

allowed to be a valid excuse, how easy would it be for the artful and designing to impose on the illiterate and unsuspecting, who, whilst they were thus incautiously vending treason and sedition, might be the occasion of the real culprit escaping both detection and punishment.

Gentlemen, let it not be supposed that any thing which I have now advanced has any the remotest tendency to violate the liberty of the press; I know too well how much we are indebted to that valuable privilege, to have the least desire to see it in the slightest degree infringed; I would personally hazard as much as any man for its preservation; but I know too that the best method of perpetually securing to us the enjoyment of this privilege, is to check any intolerable licentiousness of it; if we wish to have it the fountain of truth, of honour, of virtue, of liberality and freedom, we must cleanse its spring from all pollution, and not permit it to flow in torrents of treasonable and seditious doctrines—this liberty, like the liberty of the subject, must have its legal definition and security, and as well might it be contended, that the liberty of the subject was infringed by the commitment of the robber and assassin, as that the liberty of the press was violated by the punishment of the publisher of immorality, treason and sedition. To avoid the imputation of singularity in these observations, give me leave to explain them more fully, by reading to you the precise words of that eloquent commentator on the laws of his country, Mr.

Justice

Justice Blackstone, to whose sentiments on this subject I should do manifest injustice, were I to express them in any language less emphatic than his own : that elegant Author, in treating of this offence, says, " In this and the other instances which we lately have considered, where blasphemous, immoral, treasonable, schismatical, seditious, or scandalous libels are punished by the English law, some with a greater, others with a less degree of severity ; the Liberty of the Press, properly understood, is by no means infringed or violated. The liberty of the press is indeed essential to the nature of a free state : but this consists in laying no previous restraints upon publications, and not in freedom from censure for criminal matter when published. Every freeman has an undoubted right to lay what sentiments he pleases before the public : to forbid this, is to destroy the freedom of the press : but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion and government. But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid

foundation

foundation of civil liberty. Thus the will of individuals is still left free; the abuse only of that free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or enquiry: liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments, destructive of the ends of society, is the crime which society corrects. A man (says a fine writer on this subject) may be allowed to keep poisons in his closet, but not publicly to vend them as cordials. And to this we may add, that the only plausible argument heretofore used for restraining the just freedom of the press, ‘that it was necessary, to prevent the daily abuse of it,’ will entirely lose its force, when it is shewn (by a reasonable exertion of the laws) that the press cannot be abused to any bad purpose, without incurring a suitable punishment: whereas it never can be used to any good one, when under the controul of an inspector. So true will it be found, that to censure the licentiousness, is to maintain the liberty of the press.”

But surely it needed not the argument and assistance of this learned Judge to convince us of truths so self-evident: What? If we protect the religion of our country by inflicting punishment on the publisher of blasphemy and impiety; if we protect the morals of mankind, and of the rising generation, by passing an ignominious sentence on the vender of obscene and lascivious prints and publications; if we protect the private characters of individuals, by subjecting the slanderer to make ample compensation in damages to the injured, by means

means of civil process, or to fine and imprisonment by a criminal prosecution; shall we not equally protect the established character of the Constitution from the attacks of its malevolent and designing enemies? shall we not extend the protection to defend the honour of a virtuous, religious and beloved Sovereign, and the reputation of the other two branches of our Government; or are we prepared to say, that whilst the meanest individuals can have redress for such wrongs, that the highest official characters in the country shall sue for it in vain? Gentlemen, such a proposition is too monstrous to be endured, and needs only to be stated to expose its absurdity.

In the present times too, there can be no just cause of apprehension that the ~~spirit~~ will be weighed down by the hand of power, or convicted by partial or prejudiced judges; the late bill respecting libels having now left to the jury of his Peers, the consideration both of the evil tendency of the publication and of the malignity of its Author.

I ought, Gentlemen, to make some apology for having so long detained you from your duty, by dwelling so minutely on this offence; in regard to the other, viz. the holding seditious and illegal meetings I shall be more concise.

Such meetings, in some instances, may be a misdemeanour only, in others may amount to the crime of high treason.

Any meeting convened and assembling for the purpose of forcing the enacting, the repealing, or altering any law.

law or statute, or the change of any part of the Constitution ; to intimidate Magistrates in their duty, or assuming to itself the power of its own authority to remove and redress grievances, or in short to do any act which is not warranted by the law and constitution of the realm, is an unlawful assembly ; and is considered so, whether the purpose for which it was assembled is carried into execution or not.

But if such persons proceed further than mere deliberation, if by means of riot and tumult they endeavour to compel the execution of such measures, such acts would amount to the crime of high treason, for which the lives of the offenders would be responsible.

You, Gentlemen, who know how much the peace and welfare of society depend on well-regulated Government, and on maintaining a due and proper subordination, must clearly see the necessity of such laws and the propriety of sometimes enforcing them ; I will not, therefore comment on their utility. Little reason indeed should we have to boast of our liberty, if either our Legislature or our Magistracy were to be influenced or controlled by the terrors of factious and clamorous misrepresentation. We live in a free country, under mild and equitable laws, equally binding on the rich as on the poor, both equally amenable to punishment for the violation of them--thank God, in this kingdom, the cottage of the peasant is as much his castle, and as much under the safeguard and protection of these laws, as the Palace of the Prince ; oppression and tyranny can-
not

not enter to destroy the happiness or to injure the tenants of either : it is this equal security, extended to all ranks alike, which is the true criterion of Freedom combined with good Government. Our laws are not injurious to the honest, the peaceable, the industrious, they are levelled only against the idle, the dissolute and abandoned : it is men of this latter description who are always to be found among the discontented, and who, in concert with the ambitious and the disappointed, endeavour to promote change and create confusion ; the one to gratify a little selfish pride and acquire a temporary ill-got fame, the other to participate in general plunder : I trust that this nation has sense to distinguish the views of such men, has prudence to thwart them, and has courage and spirit to overcome them.

In what I have now said to you, Gentlemen, I have considered myself as addressing men, who are firmly attached to that Constitution which they have received from their ancestors, who esteem and value it as their dearest birthright and inheritance ; to men, who will always be ready and willing to defend that Constitution, which has protected them in every thing which makes society endearing, and life valuable ; to men, who wish to bequeath that inheritance to their children and to posterity, with all its rights, privileges, and immunities, unimpaired in its vigour, and undiminished in its lustre.

Gentlemen, I cannot now dismiss you from this Court, without expressing my thanks for your patient attention, or without assuring you of my perfect confidence

dence in your honour, your integrity and your loyalty, and that you will this day perform your duty with that firmness, impartiality and justice, as to merit the thanks and approbation of your country, in whose service you are now essentially employed.

F I N I S.

